

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF ILLINOIS

In Re: )  
 ) In Bankruptcy  
TERRY ALLEN SCROGUM, )  
 ) Case No. 04-72289  
Debtor. )

**OPINION**

This proceeding is before the Court on the Objection to Confirmation of Debtor's Amended Plan filed by Mazda American Credit ("Mazda") on August 23, 2004.

On August 12, 2002, Debtor entered into a Retail Installment Contract for the purchase of a 2002 Mazda Protege. Debtor agreed to pay \$355.39 per month for sixty months, commencing January 25, 2003. The note bore an annual percentage interest rate of 0.00%.

On May 18, 2004, Debtor filed his Chapter 13 petition in bankruptcy. Debtor listed Mazda as a secured creditor with a lien on the 2002 Mazda Protege. On June 14, 2004, Mazda filed its Proof of Claim in the amount of \$15,637.16 plus 9% interest per annum. On August 16, 2004, Debtor filed an Amended Chapter 13 Plan, which proposes to pay Mazda in the following manner:

The total indebtedness due and owing to Mazda American Credit is \$15,600. Said indebtedness is secured by a 2002 Mazda Protege having a fair market value of \$10,850. The Debtor shall pay, **through the Amended Plan**, the sum of \$355.00 a month at the same contract interest

rate current in effect on said amount of \$10,850 until said sum of \$10,850 together with interest accruing from time to time on said account has been paid in full. The balance of the indebtedness due and owing Mazda American Credit (that sum which exceeds the fair market value of the 2002 Mazda Protege), same being \$4,750, shall be treated as an unsecured claim to be paid pursuant to the same percentage paid to all other unsecured creditors whose claims are allowed.

Amended Plan at p. 3 (emphasis in original).

Mazda objects to the above-quoted plan provision. Specifically, Mazda argues that it is entitled to interest at a rate of 6.25% per annum on the \$10,850 secured indebtedness being paid under the Plan.

Section 1325 of the Bankruptcy Code provides in part as follows:

(a) Except as provided in subsection (b), the court shall confirm a plan if --

. . . .

(5) with respect to each allowed secured claim provided for by the plan --

. . . .

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim(.

. . . .

(b) (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan --

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim(.)

. . . .

It is axiomatic that the bankruptcy process provides debtors the opportunity, and bankruptcy courts the authority, to modify the number, timing, and amount of an installment payment from those set forth in a debtor's original contract. See In re Till, 124 S.Ct. 1951, 1959 (2004). The real question is whether the cram down provisions being proposed are reasonable and appropriate under the circumstances.

The United States Supreme Court has recently determined that the formula approach - taking the national prime rate, then adjusting it to compensate the lender for the risk incurred in making the loan - is the appropriate method for determining the adequate rate of interest on crammed down loans pursuant to a Chapter 13 plan. Id. at 1961-62.

In the case at bar, no evidence was presented on the question of the appropriate interest rate. Absent the presentation of evidence regarding the appropriate risk adjustment, this Court will utilize a "prime rate plus" formula. Inasmuch as the prime rate

is, according to the Wall Street Journal on September 13, 2004, 4.5% per annum, and inasmuch as the debtor proposes in his amended plan to pay Mazda at the rate of 0.00% per annum, the Court finds that the Debtor's Amended Chapter 13 Plan violates Section 1325 of the Bankruptcy Code and, therefore, confirmation of the Amended Plan must be denied.

As indicated above, Mazda argues that it is entitled to interest at a rate of 6.25% per annum on its secured indebtedness. The Court finds that interest rate to be reasonable under the circumstances, and the Court would be inclined to confirm a plan in this case which provided accordingly.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: September 15, 2004

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LARRY LESSEN  
UNITED STATES BANKRUPTCY JUDGE

c: Francis J. Giganti  
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John H. Germeraad  
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Steven L. Nelson  
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U.S. Trustee  
401 Main St. #1100  
Peoria, IL 61602

CERTIFICATION OF MAILING

The undersigned, deputy clerk of the United States Bankruptcy Court, hereby certifies that a copy of this Opinion was mailed and/or otherwise transmitted this date to the parties listed herein.

Dated: September 15, 2004

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**ORDER**

For the reasons set forth in an Opinion entered this day,

IT IS HEREBY ORDERED that confirmation of Debtor's Amended Chapter 13 Plan be and is hereby denied.

IT IS FURTHER ORDERED that Debtor be and is hereby given 21 days in which to submit a second Amended Plan.

ENTERED: September 15, 2004

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LARRY LESSEN  
UNITED STATES BANKRUPTCY JUDGE

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Dated: September 15, 2004